

**REMARKS/ARGUMENTS**

This response is timely filed as it is filed within the three (3) month shortened statutory period for response to the Final Action. Further, as this response is hereby filed within two (2) months of the mailing date of the Final Action, it is understood that the shortened statutory period will expire on the date the advisory action is mailed should such advisory action not be mailed until after the end of the three-month shortened statutory period.

**Telephone Summary**

On 07 June 2007, the undersigned left a telephone message for Examiner Hill seeking clarification of the status of the claims in the application in view of apparently inconsistent statements in the Final Action. On 08 June 2007, Examiner Hill left a phone message for the undersigned that appears to have cleared-up such apparent inconsistent statements.

In view of Examiner Hill phone message, it is understood that:

1. Claims 1-17 and 29-39 are the pending claims in the application as claims 18-28 were previously cancelled;
2. Claims 10, 14 and 38 are allowed/allowable; and
3. Claims 1-9, 11-13, 15-17, 29-37 and 39 have been finally rejected.

The undersigned wishes to thank Examiner Hill for kindly returning the undersigned's telephone message and providing the requested clarification of the status of the claims.

Claims 1-17 and 29-39 remain in the application.

**Request for Telephone Interview**

Applicants intend and believe that this document is fully and properly responsive to the Final Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed or resolved in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

**Allowed/Allowable Subject Matter**

As a preliminary matter, the undersigned wishes to thank Examiner Hill for the allowance of and/or the indication of allowable subject matter in claims 10, 14 and 38.

**Claim Rejections - 35 U.S.C. §102(b)**

1. Claims 1, 2, 4, 5, 8, 12, 13, 15, 29, 30, 32, 33 and 36 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,973,325 to Sherrod et al. (hereinafter "Sherrod").

These rejections are respectfully traversed.

Claims 1, 15 and 29 are independent claims, with claims 2, 4, 5, 8, 10, 12 and 13, directly or indirectly, dependent on claim 1 and claims 30, 32, 33 and 36 dependent on claim 29.

With respect to claims 1, 29 and 30, the Final Action asserts that:

Sherrod discloses a feminine pad 10, 28 comprising an absorbent core 14 sandwiched between a fluid permeable cover 20, 44 and a fluid impermeable baffle 22, 42 (column 3, lines 49-53), the absorbent core having central absorbent member 32 disposed over and extending into a void of an outer absorbent member 30 (column 4, line 41 and figure 6); and a transfer member/wicking barrier 54 disposed between outer absorbent member 30 and central absorbent member 32, said wicking barrier comprising a vertical component that spans a vertical distance between the outer and central absorbent members and a horizontal component that spans a horizontal distance on the bodyside of the absorbent core, the wicking barrier facilitates movement of body fluid from the permeable cover 44 downward and outward to distant areas of central and outer absorbent members 30, 32 (column 4, lines 38-41 and figure 6).

Claims 1 and 29 are each directed to specified absorbent articles. More particularly, claims 1 and 29 each require that the respective claimed absorbent articles include an absorbent core comprising an outer absorbent member and a central absorbent member. The claimed absorbent articles also include a wicking barrier disposed between the outer absorbent member and the central absorbent member. The wicking barrier comprises a vertical component and a horizontal component, with the vertical component spanning a vertical distance between the outer absorbent member and the central absorbent member and the horizontal component spanning a horizontal distance on the body side surface of the absorbent core.

The Final Action, in making the outstanding rejections, as in the immediately preceding Action, again identifies and relies on and combines inconsistent features and elements of a prior art feminine pad illustrated in FIGS. 1 and 2 of Sherrod

with features and elements of a feminine pad disclosed and shown in FIGS. 3-6 of Sherrod. For example, the feminine pad 10, the absorbent 14, the fluid permeable cover 20 and the fluid impermeable 22 are only shown in prior art FIGS. 1 and/or 2 of Sherrod. This prior art feminine pad 10 does **NOT** include an absorbent core comprising an outer absorbent member and a central absorbent member, let alone also include a wicking barrier disposed between the outer absorbent member and the central absorbent member, as claimed.

In the "Response to Arguments" section of the Final Action, the Examiner maintains:

10 Sherrod discloses central absorbent 32 disposed over the void/open area disposed in outer absorbent member 30 (see figure 6). [Page 2, third paragraph.]

15 Claim 1, however, requires an absorbent article comprise an absorbent core comprising an outer absorbent member having a void centrally disposed therein, the centrally disposed void open toward the body side of the absorbent article, and a central absorbent member disposed over the centrally disposed void of the outer absorbent member and extending into the centrally disposed void.

20 The absorbent article shown in FIG. 6 of Sherrod does not include "an outer absorbent member having a void centrally disposed therein" nor does the article shown in FIG. 6 of Sherrod have "a central absorbent member disposed over the centrally disposed void of the outer absorbent member and extending into the centrally disposed void", as required by claim 1. The Final Action does not identify, by reference numeral or otherwise, a "centrally disposed void" in the assembly of Sherrod.

25 Sherrod specifically discloses that the absorbent article 28 shown in FIGS. 3-6 thereof "is constructed of a pair of absorbent[s] 30 and 32 positioned adjacent each other." [See column 4, lines 6-9, emphasis added.] The "adjacent" placement of the absorbents 30 and 32 in the Sherrod absorbent article 28 is further evident in Sherrod FIGS. 5, 6 and 8. Thus, in Sherrod, there is no absorbent member (i.e., "an outer absorbent member") with a void centrally disposed therein and consequently Sherrod does not show or disclose an assembly wherein another absorbent member (i.e., "a central absorbent member") is disposed over and extending into such a centrally disposed void. With the adjacent placement of the absorbents 30 and 32 of Sherrod, there is no void in an outer absorbent member let alone a "void centrally disposed therein" and there is no central

absorbent member disposed over and extending into such a centrally disposed void, as required by the claims.

As identified above, the absorbent articles of claims 1 and 29 also include a wicking barrier disposed between the outer absorbent member and the central absorbent member. The wicking barrier comprises a vertical component and a horizontal component, with the vertical component spanning a vertical distance between the outer absorbent member and the central absorbent member and the horizontal component spanning a horizontal distance on the body side surface of the absorbent core.

The Final Action asserts that the term "wicking barrier" is not set forth with reasonable clarity and precision in the application and thus "the term has been given its plain meaning." The Final Action then contends that "since the transfer member 54 of Sherrod reduces leakage by transferring fluid, it meets the limitation of 'wicking barrier.'"

As previously submitted, however, the Application discloses that a wicking barrier can comprise any barrier material between two segments of material that reduces lateral wicking of fluid from the central absorbent member to the surrounding outer absorbent member. [See page 30, lines 31-33.] Moreover, the wicking barrier can not only interfere with wicking flow, wherein capillary forces move the fluid, but also impede more rapid flow as well, including gushes of flow driven by hydraulic pressure or gravitational force. Thus, the flow isolation effect of the wicking barrier is not limited to wicking flow alone. [See page 10, lines 12-15.]

In contrast, Sherrod specifically states that the transfer member 54 thereof "can be constructed from any material which will readily transfer fluid as well as having the ability to give the fluid up to a cellulose absorbent or to an absorbent containing a superabsorbent." [See Column 4, lines 41-45.]

Thus, in contrast to a barrier (as required by the claims), the transfer member 54 of Sherrod is specifically and expressly disclosed as being constructed of any material "which will readily transfer fluid." The distinction between a flow barrier material, as claimed, and a material that readily transfers fluid, as disclosed in Sherrod, is clear from the plain meaning of the term(s) used in the application (i.e., "wicking barrier") and the term(s) used in Sherrod (i.e., "transfer member").

Absorbent articles, such as claimed and comprising an outer absorbent member and a central absorbent member with a wicking barrier disposed between the outer absorbent member and the central absorbent member, are not shown or suggested by the prior art.

5 Independent claim 29 requires the absorbent article additionally include at least one of a topsheet and a backsheet disposed directly adjacent the absorbent core. An absorbent article which includes an absorbent core comprising an outer absorbent member and a central absorbent member; a wicking barrier disposed between the outer absorbent member and the central absorbent member and at least one of a topsheet and a backsheet  
10 disposed directly adjacent the absorbent core is not shown or suggested by the Sherrod.

In view of the above, independent claim 1 and the claims dependent thereon (including claims 2, 4, 5, 8, 10, 12 and 13) as well as independent claim 29 and the claims dependent thereon (including claims 30, 32, 33 and 36) are believed to be patentable over the prior art of record and notification to that effect is solicited.

15 Further, at least certain of these claims include additional limitations which are believed to further patentably distinguish over the prior art of record. For example, claims 5 and 33 each require that the wicking barrier have a liquid permeability gradient such that the wicking barrier is more liquid permeable away from the body side of the article.

20 While the Final Action cites Sherrod column 6, lines 10-15 and FIG. 6 as disclosing that the transfer member 54 distributes the body fluid stain 74 "laterally to a greater portion of the distant/outer garment facing of absorbent member 30, 32", nowhere does the Final Action cite or identify any disclosure, showing or suggestion that the transfer member 54 of Sherrod has a liquid permeability gradient let alone that the transfer  
25 member 54 Sherrod is more liquid permeable away from the body side of the article, as required by these claims. Moreover, "lateral distribution" as referred to in the Final Action does not correspond to body side to garment side, e.g., depth-wise, liquid permeability in an absorbent article as set forth in the claims.

30 Claims 8 and 36 each require that the central absorbent member further comprises an outer perimeter and a center, and the wicking barrier is adapted to establish a pathway for fluid flow from the center of the central absorbent member to the outer perimeter of the central absorbent member. Such absorbent articles are not shown or

suggested by the cited portions of Sherrod. For example, in FIG. 6 does not show or support fluid flow from the center of the central absorbent member to the outer perimeter of the central absorbent member, as required by these claims.

5 Claim 13 requires that "the central absorbent member comprises a spiral wound composite having at least one layer of absorbent material and at least one layer of barrier material wound together in a spiral form." While the Final Action asserts that "the method of forming the device (e.g. 'spiral wound composite') is not germane to the issue of patentability of the device itself" and therefore "this limitation has been given little patentable weight", the Final Action fails to acknowledge that claim 13 requires that the  
10 central absorbent member be a composite having at least one layer of absorbent material and at least one layer of barrier material in a spiral form. As the Final Action does not even assert that the cited prior art shows or suggests an absorbent article satisfying such structural limitations, it is respectfully submitted that such claim is further patentable over the prior art of record and notification to that effect is solicited.

15 As identified above, claim 15 is also an independent claim. In rejecting claim 15, the Final Action asserts:

20 Sherrod discloses the article as discussed above with respect to claim 1 and further discloses peel strip/shaping layer 80 (column 6, lines 18-25 and figure 6).

Claim 15 requires that the absorbent core comprise a central absorbent member and an outer shaping member. Claim 15 further requires that the outer shaping member have a void centrally disposed therein for receiving at least a portion of the central  
25 absorbent member, whereby an interface is defined between the central absorbent member and the outer shaping member, the interface spanning a vertical distance. Claim 15 still further requires a wicking barrier disposed along a vertical distance of the interface between the central absorbent member and the outer shaping member, wherein the wicking barrier comprises a horizontal component spanning a horizontal distance on the body side  
30 surface of the absorbent core.

It is respectfully submitted that the peel strip 80 of Sherrod in no way corresponds to the claimed "outer shaping member." For example, the peel strip 80 of Sherrod does not have "a void centrally disposed therein for receiving at least a portion of the central absorbent member". Nor does Sherrod show or suggest forming an interface

spanning a vertical distance between the central absorbent member and the outer shaping member. Nor does Sherrod show or suggest a wicking barrier disposed along a vertical distance of the interface between the central absorbent member and the outer shaping member.

5 In view thereof, the withdrawal of the subject rejections is requested and notification to that effect is solicited.

#### Claim Rejections - 35 U.S.C. §103

10 2. Claims 3, 6, 7, 9, 11, 16, 17, 31, 34, 34, 35, 37 and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sherrod.

With regard to claims 3, 6, 31 and 34, the Final Action acknowledges that Sherrod does not expressly disclose a wicking barrier that is formed from an apertured film. The Final Action, however, alleges that:

15 One would be motivated to modify the wicking barrier with an apertured film for enhanced vertical fluid wicking since it is well known that the addition of apertures increases said fluid wicking. Therefore, it would be obvious to one of  
20 ordinary skill in the art at the time the invention was made to modify the wicking barrier and thus provide a wicking barrier formed of an apertured film.

With regard to claims 9, 11, 37 and 39, the Final Action alleges that:

25 Sherrod discloses wicking barrier 54 and central absorbent member 32 as discussed above with respect to claims 1 and 29. It would have been obvious to one of ordinary skill in the art to modify the wicking barrier and central absorbent  
30 members of Sherrod to have multiple layers, as opposed to a single, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

35 With regard to claims 16, 17 and 35, the Final Action alleges that:

40 Sherrod inherently [discloses?] outer shaping member thickness, edge width, base weight or wicking barrier horizontal spanning distance values since the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not [?] render the old composition patentably new to the discoverer.

Claims 3, 6, 7, 9 and 11 are dependent on claim 1; claims 16 and 17 are dependent on claim 15; and claims 31, 34, 35, 37 and 39 are dependent on claim 29. As independent claims 1, 15 and 29 are believed to be patentable over Sherrod for the reasons advanced above, these claims respectively dependent thereon are also believed to be patentable over Sherrod and notification to that effect is solicited.

The rejections of claims 3, 6, 31 and 34 are believed further deficient as, for example, the Final Action fails to identify any motivation for increasing the fluid wicking of a wicking barrier let alone to increase the fluid wicking of a wicking barrier specifically via the inclusion of apertures.

The rejections of claims 7 and 35 are believed further deficient as, for example, parameters that the Final Action alleges are inherently disclosed in Sherrod in no way appear related to the limitations of claims 7 and 35. More specifically, claims 7 and 35 require that the pores in the wicking barrier be about 1 mm or greater below the surface of the outer absorbent member. As the Final Action acknowledges that Sherrod does not disclose a wicking barrier that is formed from an apertured film, clearly Sherrod does not inherently disclose placement of pores in the wicking barrier at about 1 mm or greater below the surface of the outer absorbent member.

The rejections of claims 9, 11, 37 and 39 are believed further deficient as, for example, the Final Action fails to identify any motivation for employing multiple vertical layers of barrier material (claims 9 and 37) or a plurality of vertically oriented layers of nonabsorbent material (claims 11 and 39) in absorbent articles, as claimed. Furthermore, the claimed absorbent article inclusion of multiple vertical layers of barrier material and/or of a plurality of vertically oriented layers of nonabsorbent material does not correspond to a "mere duplication" of essential working parts. The claimed inclusion of multiple vertical layers of barrier material and/or of a plurality of vertically oriented layers of nonabsorbent material has not been shown in any prior art reference. This is in sharp contrast to the situation in the Final Action-cited *St. Regis Paper Co. v. Bemis Co.* wherein the court had found that the use of multiple layers to achieve the effect of many bags within one had been known in the bag industry for many years. [See 193 USPQ 11.]

In view of the above, these claims are believed to be patentable over the prior art of record and notification to that effect is solicited.



**Conclusion**

In view of the above, all pending claims are believed to be in condition for allowance and notification to that effect is solicited. However, should the Examiner detect any remaining issue or have any question, the Examiner is kindly requested to contact the undersigned, preferably by telephone, in an effort to expedite examination of the application.

Respectfully submitted,



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